

Introduced by Senator Speier

February 17, 2005

An act to add Article 2.2 (commencing with Section 10133.92) to Chapter 1 of Part 2 of Division 2 of the Insurance Code, relating to structured settlements.

LEGISLATIVE COUNSEL'S DIGEST

SB 410, as amended, Speier. Structured settlements.

Existing law generally regulates insurance, including the transfer of structured settlement payment rights.

This bill would ~~specify the rights of a consumer under a structured settlement, as defined~~ *provide that the consumer in a structured settlement transaction shall have the right to select an insurance producer and qualified funding asset provider after the defendant or insurer has agreed with the consumer on an amount that the defendant or insurer is willing to pay on a specific funding date to be released from liability, and would prohibit the defendant or insurer from withdrawing an offer because the consumer has exercised this right.* The bill would impose various requirements on producers who sell, solicit, and negotiate structured settlements, ~~and would provide for the protection of structured settlement funds from other claimants.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Article 2.2 (commencing with Section
- 2 10133.92) is added to Chapter 1 of Part 2 of Division 2 of the
- 3 Insurance Code, to read:

1 Article 2.2. Structured Settlement Agreements

2
3 10133.92. For the purposes of this article, the following terms
4 have the following meanings:

5 (a) “Structured settlement” has the meaning given that term in
6 Section 5891(c)(1) of Title 26 of the United States Code.

7 (b) “Consumer” means the person who serves as the
8 measuring life for an annuity purchased to fund the periodic
9 payments of a structured settlement.

10 (c) “Qualified assignment” has the meaning given to that term
11 in Section 130(c) of Title 26 of the United States Code.

12 ~~(d) “Designated settlement fund” has the meaning given to~~
13 ~~that term in Section 468B(d)(2) of Title 26 of the United States~~
14 ~~Code.~~

15 ~~(e) “Qualified settlement fund” has the meaning given to it in~~
16 ~~Section 1.468B-1 of Title 26 of the Code of Federal Regulations.~~

17 ~~10133.93. (a) In any structured settlement, the consumer~~
18 ~~shall have all rights to the annuity or other contract that is~~
19 ~~purchased to fund the periodic payments of the structured~~
20 ~~settlement, regardless of the actual or constructive ownership of~~
21 ~~the annuity. The consumer’s rights to the annuity or other~~
22 ~~contract shall include the right to have the commission paid for~~
23 ~~the annuity or contract directed as payment for consulting~~
24 ~~services benefitting the consumer.~~

25 ~~(b) If the consumer agrees to allow the person who is a party~~
26 ~~to the suit, agreement, or workers’ compensation claim giving~~
27 ~~rise to the structured settlement to make a qualified assignment,~~
28 ~~of any periodic payment liability, the consumer shall have the~~
29 ~~right to select, without restrictions, the life insurance company to~~
30 ~~issue the annuity or other contract, the assignee related to the~~
31 ~~annuity issuer, and the insurance producer who will receive the~~
32 ~~commissions for its sale, solicitation, and negotiation.~~

33 *10133.93. The consumer shall have the right to select an*
34 *insurance producer and qualified funding asset provider after the*
35 *defendant or insurer has agreed with the consumer on an amount*
36 *that the defendant or insurer is willing to pay on a specific*
37 *funding date or dates to be released from liability. The defendant*
38 *or insurer shall not withdraw an offer because the consumer has*
39 *exercised this right.*

10133.94. The following provisions apply to the insurance producer who is paid for the sale, solicitation, or negotiation of the annuity or other contract:

(a) The producer shall be duly licensed in this state as a broker or agent if either of the following is true:

(1) The consumer resides in this state.

(2) The claim settlement negotiation takes place in this state; ~~and the consumer is present at the negotiation.~~

(b) The producer shall not be released from any liability resulting from the sale of the annuity or other contract due to the producer's negligence or violation of a state statute pertinent to the transaction, including a producer licensing statute, when the consumer's interests are affected by a matter covered by the statute. *This subdivision shall not apply to a producer who is paid by the defendant or insurer to represent the interests of the defendant or insurer, and who does not receive commissions consented to by the consumer pursuant to subdivision (c).*

(c) The producer shall not be required to share commissions with a producer or any other person or entity not selected by the consumer, unless the consumer gives written consent to the sharing arrangement after receiving full disclosure from the producer selected *by the consumer*. The consumer's consent to such a sharing arrangement shall not be required as a condition of settlement. *Nothing in this subdivision shall prohibit a defendant or insurer from paying for the services of a producer to represent the interests of the defendant or insurer. However, those services shall not be paid for from the amount that the defendant or insurer is willing to pay on a specific funding date or dates to be released from liability.*

(d) The producer shall not engage in any rebating or commission sharing arrangement either directly or indirectly, that is not authorized by the consumer pursuant to subdivision (c), regardless of whether the other person or entity benefitting from such an arrangement is licensed as an insurance producer.

~~10133.95. Notwithstanding any other provision of law, no person shall be deemed to have constructive receipt or economic benefit of any funds deposited into a designated settlement fund or a qualified settlement fund, regardless of the number of claimants to those funds and regardless of whether the funds have been allocated among claimants.~~

O